



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 28, 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2000-16

B. Holly Schadler
Brian G. Svoboda
Perkins Coie LLP
607 14th Street, N.W.
Suite 800
Washington, D.C. 20005-2011

Dear Ms. Schadler:

This responds to your letters dated June 8, July 5, July 14 and August 4, 2000, on behalf of Third Millennium: Advocates for the Future, Inc. ("Third Millennium"), requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a project examining young voter disengagement from the political process.

Third Millennium is a nonprofit corporation organized in 1993 under the laws of New York and exempt from tax under 26 U.S.C. §501(c)(3). You state that Third Millennium is "[n]onpartisan in both its structure and activities" and note that, under section 501(c)(3), it is prohibited from participating or intervening in any political campaign on behalf of or in opposition to any candidate for public office. You explain that Third Millennium's purpose is, among other things, to encourage participation in the electoral and legislative processes by younger Americans.¹ The organization is now engaged in a project called "Neglection 2000," in which it seeks to examine and address

¹ The request materials indicate that Third Millennium is "a Generation X organization that undertakes research and analysis to promote the civic involvement of young people and to redirect the country's attention from the next election cycle to the next generational cycle." They further state that "Third Millennium does not endorse or oppose any candidate for public office or otherwise engage in partisan activity."

the problem of young voter disengagement from the political process and the threat this disengagement poses to democracy at large.²

Third Millennium tracked the problem of young voter apathy during the 2000 Presidential primaries. It recently issued a report entitled, "Don't Ask, Don't Vote," which is briefly described in footnote 4 below. Third Millennium believes that the problem reflects a downward spiral of mutual neglect: young people vote in low numbers because campaigns do not target them, and campaigns do not target them because they vote in low numbers. Having assessed the causes and extent of young voter apathy, Third Millennium now seeks to measure whether repeated exposure to positive Internet advertisements from presidential candidates affects voter participation among young adults.³ Third Millennium also believes that the Internet, with its disproportionately younger audience and relatively lower cost of communication, offers the opportunity to correct the imbalance wherein campaigns focus disproportionately on older voters.⁴

Toward this end, Third Millennium proposes to retain the services of Juno, an established Internet service provider that requires subscribers, as a condition of receiving Juno's free Internet access service, to provide extensive demographic information and to review paid advertising.⁵ In late August, Third Millennium will send a survey questionnaire to a random universe of 250,000 subscribers, aged 18 years old or over, to see whether they intend to vote, for whom they would vote, and the political party, if any, to which they belong. Those subscribers will be informed that they will be part of a

² You note that, in an era of steady decline in voter turnout, the voting rate for young adults is the lowest of all adult age groups, with only 32% of 18-to-24-year-olds having voted in the 1996 general election.

³ Third Millennium poses three hypotheses for its research objective: (1) Among adults surveyed around Labor Day 2000 who indicate they are "not likely" or only "somewhat likely" to vote, those individuals who subsequently view repeated presidential candidate Internet ads will end up voting in higher numbers than those who do not see any ads at all; (2) Adults ages 18-34 comprise the age cohort most likely to be persuaded to vote after viewing repeated presidential candidate Internet ads; (3) While exposure to presidential candidate Internet advertisements will increase turnout, this will not be dependent upon whether a viewer sees ads from one candidate or multiple candidates.

⁴ The request includes a copy of the report, a *USA Today* article on the project by the president of Third Millennium and a brief article in *The New York Times* on the report. The report contains: (1) an analysis of advertising in the 2000 presidential primaries in terms of age group targeting; (2) a discussion of young primary voter turnout percentages as compared to turnout by other age groups; (3) an analysis of data from a survey of potential voters to discern generational attitudes toward voting and campaigns and use of the Internet; (4) anecdotal impressions of young adults' attitudes toward the campaign process; (5) ten categories of recommendations on how campaigns may more effectively convey their messages to young adults, including use of the Internet for advertising; (6) short essays on how best to encourage young adult voting authored by the advisory board of Neglection 2000, which consists of persons from other organizations that analyze the electoral process, media consultants, pollsters, and academicians; and (7) an appendix containing data that serves as a basis for the report.

⁵ Juno's demographic information from its subscribers enables Third Millennium to create a detailed aggregate portrait of the subscribers' interests and behavior. However, Third Millennium has no access to and no interest in specific subscribers' demographic and psychographic information. Additionally, although Juno has access to the subscribers' phone numbers and home addresses, Third Millennium will not conduct a telephone or U.S. mail survey of these subscribers. Rather, demographic and geographic information will be used generically (i.e., suburban subscribers voted more than urban voters), not "Jane Doe from 123 Main Street in Anytown, USA" voted, and Harry Jones did not.

research project about viewing political advertisements on the Internet and the Internet's influence on political participation.⁶

Third Millennium anticipates that approximately 40,000 subscribers will respond to the survey. This group of individuals will be the subjects for the second stage of the project (described below); the other 210,000 will not be contacted again and will not participate further in Third Millennium's project. This pool of 40,000 enables Third Millennium to identify statistically significant relationships among specific sub-groups. For example, this research design allows for comparisons across gender, region and income. Responses to the survey will have no effect on which ads are viewed by those who participate in the study. For example, a Juno subscriber who indicates that he is "somewhat likely" to vote, and is inclined to vote for Candidate A, has an equal chance of seeing an ad for Candidate A as he does for any other candidate. Thus, in the aggregate, no candidate will enjoy a competitive advantage.

The second stage of the project involves randomly dividing the pool of 40,000 into equal subgroups of 4,000 each. Nine of these ten groups will view Internet advertisements for Presidential candidates on space purchased for a fee by Third Millennium from Juno. One group will view no Internet political advertising at all throughout the campaign season that commences on Labor Day and ends on Election Day; this group will be the control group. A second group (n= 4,000) will view advertisements only for Democratic presidential nominee Vice President Al Gore. A third group (n=4,000) will view Internet advertisements only for Governor George W. Bush. Other groups of 4,000 will see ads for specific ballot-qualified third-party

⁶ The questionnaire [actual wording not yet finalized] will ask the following questions:

1. If the election were held today, how likely are you to vote in the 2000 presidential campaign? [Rotate answers]
 - a) Not likely
 - b) Somewhat likely
 - c) Most likely
2. If you are somewhat likely or very likely to vote, for whom do you plan to vote? [Rotate answers]
Governor George W. Bush
Vice President Gore
Ralph Nader
Patrick Buchanan
Harry Browne
Other
3. Did you vote in the 1996 presidential campaign?
Yes No
4. How would you describe your party affiliation?
Strong Democrat
Weak Democrat
Independent
Weak Republican
Strong Republican
Other

candidates.⁷ The last group (n=4,000) will view a random mix of an equal number of ads from all the ballot-qualified candidates. There will be only one ad text for each candidate, and exposure to advertisements will be identical across each group. Each group of 4,000 will view the same number of advertisements, and each individual in a group will view the same ads as others in the group. During the period between Labor Day and Election Day 2000, each participant in the study (excluding the control group) will be exposed to a total of 15 to 20 advertisements.

The Internet advertisements will be of the “pop-up” variety, meaning that in order to receive or send e-mail through Juno, one must view a full-screen ad and then actively (using a mouse) click the advertisement off one’s screen in order to continue using Juno. Users of this service are aware that pop-up ads are part of the environment and accept these ads as a condition for receiving Juno’s free services. You also state that there would be links to the candidate’s web sites in advertisements viewed by a subset of the participants, e.g., 50 percent of a candidate’s advertisements would have such a link. The candidates would be treated equally in this regard. This approach is intended to provide data regarding the effect of access to additional information on the participant’s engagement in the political process.

You indicate that Third Millennium will treat each candidate equally as it obtains or develops the ads, giving none a qualitative or quantitative advantage. The ads will be created in one of two ways. Option One is to have each respective presidential campaign provide content and design that may be used for the experiment. If this option were chosen, letters to each campaign will be sent on August 11th, in the hopes of receiving a response by August 21st. Third Millennium will reserve the right to reject a campaign-generated ad that does not meet the criteria of the project. Specifically, no ad for a particular candidate will mention or allude to his/her opponents. Instead, each candidate’s ad must put forth a positive message about that particular candidate. Option Two entails having Third Millennium create ads for the project based upon publicly available information from the candidates (such as from their websites). Whichever option is used, the campaigns will not be paid or compensated in any manner by Juno or Third Millennium.

After the election, Third Millennium proposes to survey the 40,000 respondents and ask for whom, if anyone, they voted. The survey data will then be sorted, and Third Millennium will attempt to address the three key hypotheses set forth above. If those subscribers who view Internet ads voted at statistically significantly higher rates than the control group that was not exposed to Internet advertising, then one can conclude that: (a) there is a strong correlation between viewing these ads and voting behavior, and (b) perhaps, *ceteris paribus*, the advertising caused the increase in turnout. More importantly, if the study demonstrates that young adults are receptive to advertising through this medium, Third Millennium believes it will have discovered a cost-effective outlet for reaching this demographic in subsequent elections. The results will be

⁷ The range of candidates for whom ads will be shown will include all the general election presidential candidates who appear on enough State ballots to win an Electoral College majority.

presented to professionals of all ideologies at a major conference to be hosted by Third Millennium in December 2000.⁸

You ask whether the Act and Commission regulations permit the implementation of Third Millennium's proposal. The Commission unanimously concludes that the activity described would be permissible under the Act and Commission regulations.

The conclusion in this response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. §437f. Individual Commissioners have explained their reasons for voting to approve this opinion in separate concurring statements that accompany this opinion.

Sincerely,

(signed)

Darryl R. Wold
Chairman

Enclosures (Concurring Opinions)

⁸ You also describe the extensive academic scrutiny already given to Neglection 2000 and the peer review of project design, methodology, and accuracy that will occur at the completion of the project.